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DRAFT GST/HST LEGISLATION AND REGULATIONS TABLED

The Honourable Jim Peterson, Secretary of State (International Financial Institutions), today tabled, on behalf of the Minister of Finance, Paul Martin, a Notice of Ways and Means Motion and draft regulations relating to the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST).

The package includes proposed regulations to prescribe additional organizations eligible to receive the 100 per-cent federal rebate of the GST or the federal component of the HST on certain reading materials and audio recordings of printed books. Added to the list of recipients are several charities whose primary purpose is the promotion of literacy. The federal program, which went into effect on October 24, 1996, has channelled support to municipalities, universities, colleges, schools, public libraries, and other bodies that play a direct role in improving literacy levels in their communities.

The Notice of Ways and Means Motion proposes amendments to the *Excise Tax Act* and a related Act that clarify and refine the application of the GST and HST in the following areas:

- HST transitional rules relating to specified motor vehicle leases and subscription sales;
- Tax disclosure requirements;
- Discount coupons, promotional allowances, and patronage dividends;
- Rules affecting builders of residential complexes;
- Seizures or repossessions, and transfers of property to insurers;
- Corporate take-overs;
- Rules affecting selected listed financial institutions;

- Streamlined accounting method for charities;
- Direct cost exemption for charities and public service bodies;
- Osteopathic and speech therapy services;
- Employee and partner rebates;
- Provincial product taxes;
- Foreign conventions; and
- HST place-of-supply rules for customs brokers.

Secretary Peterson also released today several draft Regulations relating to the GST and the HST. For the most part, these regulatory amendments incorporate previously announced measures or changes that are necessary as a consequence of amendments that have been made to the *Excise Tax Act*, including those resulting from the introduction of the HST. In some cases, the Regulation is being reissued in draft form and would therefore supersede the earlier version. The following draft regulations were released:

- *Regulations Amending the Amalgamations and Windings-Up Continuation (GST) Regulations*;
- *Regulations Amending the Artists' Representatives (GST) Regulations*;
- *Regulations Amending the Credit Note Information Regulations*;
- *Deduction for Provincial Rebate (GST/HST) Regulations*;
- *Federal Book Rebate (GST/HST) Regulations*;
- *Regulations Amending the Input Tax Credit Information Regulations*;
- *Regulations Amending the Mail and Courier Imports (GST) Regulations*;
- *Regulations Amending the Public Service Body Rebate (GST) Regulations*;
- *Regulations Amending the Publications Supplied by a Non-resident Registrant Regulations*;
- *Regulations Amending the Streamlined Accounting (GST) Regulations*;
- *Regulations Amending the Taxes, Duties and Fees (GST) Regulations*; and
- *Regulations Amending the Value of Imported Goods (GST) Regulations*.

The attached notes and the accompanying publication containing the proposed amendments describe these measures in further detail. It should be noted that references in these documents to "Announcement Date" should be read as references to today's date.

Copies of the draft legislation and regulations are available from the Department of Finance Distribution Centre (613) 943-8665 at a cost of $10.00.

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NOTICE OF WAYS AND MEANS MOTION TO AMEND THE EXCISE TAX ACT AND A RELATED ACT

That it is expedient to amend the Excise Tax Act and a related Act in accordance with the proposals set out in the attached notes and accompanying publication entitled "Draft Legislation and Regulations Relating to the GST and HST" dated November 1997.

NOTES ON GST/HST DRAFT LEGISLATION AND REGULATIONS

HST TRANSITIONAL ISSUES

Leases of Specified Motor Vehicles

Section 354 of the *Excise Tax Act* (the Act) sets out rules for determining the tax treatment of leases during the transition from the retail sales tax systems to the Harmonized Sales Tax (HST) in the participating provinces. Generally, under these transition rules, lease payments attributable to a period after the implementation date of the HST (April 1, 1997) become subject to the HST and the provincial retail sales tax ceases to apply.

Where a supplier has accepted a trade-in as partial consideration for a lease of a motor vehicle, the value of that vehicle on which the provincial retail sales tax was calculated may not be the same as that on which the provincial component of the HST is calculated. Proposed new section 354.1 of the Act is intended to preserve the benefit to the lessee of the amount initially credited in respect of the trade-in for provincial sales tax purposes under lease agreements entered into before the HST implementation date for the province (April 1, 1997). The proposed section ensures that, in such cases, where a recipient is required to pay the HST on a specified motor vehicle lease entered into before that day, the value on which the provincial component of the HST is calculated will not exceed the value (excluding GST) on which the provincial retail sales tax would have been calculated. The term "specified motor vehicle" is defined in subsection 123(1). Generally, it refers to any registrable motor vehicle.

This amendment is proposed to come into force on March 20, 1997 (the day on which section 354 received Royal Assent) and would apply in respect of any lease of a specified motor vehicle for which a trade-in is accepted where the lease is entered into before April 1, 1997 or, in future, before the implementation date of the HST for the particular participating province.

Payments for Subscriptions

Subsection 352(8) of the Act provides a general HST transition rule applicable to the sale of goods in participating provinces where payment for the goods becomes due, or is made without having become due, on or after February 1, 1997 and before April 1, 1997, but delivery and transfer of ownership of the goods occurs on or after April 1, 1997. Another transition rule, in subsection 352(7), sets out a special rule applicable to sales of newspapers, magazines or other periodical subscriptions and provides that the provincial component of the HST does not apply to any payment for such a taxable supply where the payment is made before April 1, 1997, regardless of when the publications are delivered.

The grandfathering rule in subsection 352(7) is intended to override the general rule in

subsection 352(8) only with respect to amounts actually paid before April 1, 1997 for subscriptions. Therefore, subsection 352(8) should still apply to any amount that becomes due, but is not paid, before April 1, 1997. The proposed wording changes to subsection 352(8) are meant to clarify, for greater certainty, that the subsection may apply in respect of a supply to which subsection 352(7) applies, but not to the consideration referred to in subsection 352(7). This amendment is proposed to come into force on March 20, 1997, the day that these provisions were assented to.

RETAIL ISSUES

Disclosure of Tax

Section 223 of the Act sets out the general tax disclosure requirements with which all registrants must comply when making taxable supplies. Recent amendments to subsection 223(1) (enacted by c. 10, S.C., 1997) provided that, where a registrant indicates the HST on invoices, receipts or written agreements, the total amount of the tax or the total of the rates of tax applicable must be shown as opposed to indicating the 7 per cent and 8 per cent components separately. However, the amendments also had the effect of requiring that all invoices, receipts and agreements disclose this information, even where the registrant is complying with the manner of disclosure prescribed by regulations (i.e., using acceptable signs).

The proposed amendments to subsection 223(1) would retain the ability of a registrant to satisfy the disclosure requirements by following the prescribed manner, even if the registrant also issues invoices, receipts or written agreements. In other words, if the registrant is complying with the prescribed manner of disclosure, the registrant's invoices, receipts and agreements need not indicate the tax or the total tax rate, subject of course to subsection 223(2), which requires the registrant to furnish information on the demand of a recipient who requires it for input tax credit or rebate purposes. However, proposed subsection 223(1.1) would retain the existing requirement that, if the registrant does choose to indicate the tax on any invoice, receipt or agreement, whether or not in conjunction with the use of signs, that indication must be such that the total of the amount of tax or of the rates is shown.

An exception is provided under proposed new subsection 223(1.2) in relation to the supply of printed books and other prescribed items for which the supplier has credited the recipient the amount of a provincial rebate at the point of sale. In this case, the supplier may indicate the tax net of the provincial component of the HST.

These amendments are proposed to come into force on April 7, 1997, which is the effective date of the latest changes to section 223 (enacted by c. 10, S.C., 1997).

Discount Coupons

Section 181 of the Act sets out rules for the treatment of discount coupons under the GST

and HST. Recent amendments to section 181 (enacted by c. 10, S.C., 1997) permit non-reimbursable fixed-percentage coupons (e.g., a coupon offering 10% off the regular price) to be treated in the same manner as non-reimbursable fixed-price coupons (e.g., a coupon offering $10 off the regular price).

The recent amendments also added a reference to reimbursable fixed-percentage coupons in subsection 181(5), which provides for a notional input tax credit in respect of a reimbursement of a tax-included coupon. However, reimbursable fixed-percentage coupons are always treated as reducing the value of consideration for a supply and therefore the GST or HST applies to the price net of the coupon value. Since such a coupon is not treated as tax-included, there is no need to apply subsection 181(5) to it. The proposed amendment therefore deletes the reference in that subsection to a coupon that provides for a price reduction equal to a fixed percentage of the price.

The amendment is proposed to come into force on April 1, 1997 but would not apply where an input tax credit in respect of a reimbursement of a fixed-percentage coupon has been claimed in a return that has been received at a Revenue Canada office before Announcement Date.

Promotional Allowances

Proposed section 232.1 of the Act, announced on March 21, 1997, is intended to apply where a vendor who is a registrant sells goods and, in return for the promotion of the goods by another registrant, pays, credits or allows a discount to the other registrant who acquires the goods, either from that vendor or another supplier, exclusively for resale in the course of commercial activities. In these circumstances, the allowance paid, credited or allowed as a discount would not be regarded as consideration for a supply made by the recipient of the allowance.

Refinements to the draft legislation are proposed to ensure that where the promotional allowance is provided in the form of a credit against the price of property or a service for which tax had already been charged or collected, the consideration for the supply of that property or service is not deemed to be the amount net of the credit. Rather, the supplier is treated as having reduced, after the fact, that consideration for the purposes of subsection 232(2). This preserves the ability of the supplier to choose whether to adjust the tax calculated on that deemed reduction in consideration. If the supplier chooses not to adjust the tax, the allowance would not have any GST or HST consequences.

Alternatively, where the supplier chooses to treat a portion of the allowance as a tax adjustment, a credit note or debit note must be issued and the supplier may deduct the amount of the tax adjustment in determining net tax. In this case, the information requirements prescribed under the *Credit Note Information Regulations* must be complied with. Reference should also be made to the proposed amendments to those Regulations described under the Regulations section below.

If the promotional allowance is provided as a discount on the price of property or a service for which the supplier has not yet charged or collected tax, the consideration for

that supply would automatically be deemed to be equal to the amount that is net of the discount and tax would apply only on the net amount.

As was provided in the draft legislation released on March 21, 1997, if the promotional allowance is paid or credited otherwise than as a discount or credit against the price of property or a service, it is deemed to be a rebate for the purposes of section 181.1 of the Act. Therefore, the payer would have the option of indicating that a portion of the allowance is in respect of tax.

Finally, the description of the circumstances necessary for proposed section 232.1 to apply are reordered so that it is clearer that the first reference to the particular tangible personal property is a reference to the property that is acquired by the recipient of the allowance exclusively for sale for a price in money.

New section 232.1 is proposed to apply to amounts paid or credited, or allowed as a discount on or credit against the price of property or a service, after March 1997 in return for the promotion of goods.

Patronage Dividends

Amendments to section 233 of the Act that became effective April 1, 1997 adapted the GST rules relating to patronage dividends to a harmonized sales tax system. The amendments were intended to take into account the 15-per-cent HST applicable to taxable supplies made in the participating provinces. However, the resulting formulae in paragraphs 233(2)(*a*) and (*a*.1) do not determine appropriately the portion of the patronage dividend that represents a price adjustment for tax purposes in a case where the dividend is in respect of both supplies taxable at the rate of 7 per cent and supplies taxable at the rate of 15 per cent.

The existing formulae employ the factors 100/107 and 100/108. The proposed amended formulae employ the factors 100/115 and 100/107 (in relation to supplies made in participating and non-participating provinces respectively) in circumstances in which the payer of the dividend has elected to track the actual amount of the dividend relating to taxable non-zero-rated supplies instead of using an estimated amount.

Alternatively, where the payer of the dividend estimates the portion of the dividend relating to taxable non-zero-rated supplies by using the amount referred to in the section as the "specified amount", the amended formulae determine the appropriate price adjustments for supplies made in participating and non-participating provinces by multiplying that specified amount by the percentage of the total tax-included value of non-zero-rated supplies for the preceding year (used in determining the specified amount) that is attributable to supplies made in participating and non-participating provinces respectively.

These amendments are proposed to apply to patronage dividends declared after Announcement Date. Reference should also be made to the proposed amendments to the *Credit Note Information Regulations* as they apply to patronage dividends, which are described under the Regulations section below.

REAL PROPERTY

Deductions from Net Tax in Respect of New Housing Rebate

An amendment is proposed to subsection 234(1) of the Act. Prior to recent amendments (enacted by c. 10, S.C., 1997), the subsection dealt only with deductions from net tax allowed to builders in respect of new housing rebates paid or credited by them. The subsection was amended to broaden its application and allow a deduction to registrants who supply certain installation services and pay or credit rebates of the tax on such services to non-resident recipients. Accordingly, the subsection was amended to refer to a "registrant" instead of a "builder". However, this has the unintended consequence of precluding non-registrant builders from claiming a deduction from the amount of tax that they are required to remit in respect of a sale of a new residential complex. Therefore, the proposed amendment replaces the word "registrant" with the word "person", retroactive to April 24, 1996, the effective date of the previous amendment.

Self-supply Rules for Multiple Unit Residential Complexes

Section 191 of the Act is intended to ensure that GST or HST applies to newly constructed or substantially renovated residential premises where possession of the premises is transferred under a lease of the land or the building, since the subsequent sale of those premises will generally be exempt of tax as used housing. The proposed amendment applies these rules to builders who give possession of a residential unit in a multiple unit residential complex, such as an apartment building, under an arrangement whereby the building or part of the building in which the residential unit is located is sold, but the related land is the subject of a ground lease. Builders in these circumstances would be required to account for tax on the fair market value of the land and building.

A similar amendment is proposed in the case of an addition to an existing multiple unit residential complex, such as where a new floor or wing is added to an existing apartment building, and the related land is the subject of a ground lease. The builder in this circumstance would be required to account for tax on the fair market value of the addition.

These amendments are proposed to come into force on Announcement Date and apply in any case where a builder of a multiple unit residential complex or of an addition to a multiple unit residential complex gives possession of a residential unit in the complex or addition on or after that day unless possession is given under an agreement in writing entered into before Announcement Date for the sale of the building, or part of the building, forming part of the complex.

SEIZURES, REPOSSESSIONS AND TRANSFERS

Seizure, Repossession or Transfer of Zero-rated Property

Subsections 183(6) to (8) and 184(5) to (7) apply to deem a creditor who has seized or repossessed property, or an insurer to whom property has been transferred, to have received a supply of the property and to have paid tax in certain circumstances for the purpose of enabling the creditor or insurer to claim an input tax credit. This avoids double tax where the property is to be used in a commercial activity or resupplied on a taxable basis. However, as a result of recent amendments to reflect the HST, the tax deemed to have been paid is expressly calculated at the rate of 7 per cent or 15 per cent, depending on where the property is situated or where it is re-supplied by the creditor or insurer. This yields an obviously inappropriate result if the property would have been taxable at the rate of zero per cent if in fact it had been purchased by the creditor or insurer (e.g., if the property were zero-rated farm equipment).

Therefore, amendments are proposed, to have effect from April 1, 1997, so that no tax will be considered to have been paid in situations where the supply deemed to have been received by the creditor or the insurer is a zero-rated supply. The proposed amendments to subsection 183(7) and (8) and 184(6) and (7) also clarify that the supply deemed to have been received is a supply by way of sale.

Property Used by Creditor or Insurer

Under sections 183 and 184, where personal property is seized, repossessed or transferred from someone who otherwise would have had to charge tax on a supply of the property (i.e., generally where there would not have been any non-recovered tax on the property) and the creditor or insurer subsequently uses it in a participating province otherwise than in making a supply of the property, the creditor or insurer is deemed to have collected tax at the rate of 15 per cent. The creditor or insurer is also deemed to have paid tax but only at the rate of 7 per cent if the property were seized, repossessed or transferred before April 1, 2000. This unintentionally results in the payment of non-recoverable tax.

As was the case during the first three years of the GST, the intent of the transitional rules for the HST in these particular circumstances is to deem an amount of tax to have been paid equal to the amount deemed to have been collected. An amendment to clause (A) of the description of A in the formula in subparagraph 183(6)(*a*)(ii) and 184(5)(*a*)(ii) is proposed to achieve this result. These amendments are proposed to come into force on April 1, 1997.

Property Seized, Repossessed or Transferred Before April 1, 2000

Subsections 183(6) to (8) and 184(5) to (7) refer to property seized, repossessed or transferred "within three years after the implementation date" (i.e., April 1, 1997) of a participating province. The intention is to refer to any property seized, repossessed or

transferred before April 1, 2000. It is proposed that the existing reference be replaced, as of April 1, 1997, with the more precise expression "before the day that is three years after the implementation date".

Property Shipped to a Non-participating Province for Export

Subsections 183(7) and (8) and 184 (6) and (7) deal with a case where a creditor or insurer obtains property as a consequence of a seizure, repossession or transfer on or after April 1, 2000 in a participating province from a person who would not have been required to charge tax on a supply of the property. If the creditor or insurer re-supplies the property outside Canada, the creditor or insurer can claim a notional input tax credit in respect of the property, including an amount in respect of the 8 per-cent provincial component of the HST. However, as the rules currently read, if instead the creditor or insurer exports the property by shipping it through a non-participating province (i.e., supplies it in a non-participating province on a zero-rated basis), no notional input tax credit is available for the 8 per-cent provincial component of the HST.

The tax treatment of exports of personal property seized, repossessed or transferred is intended to be the same regardless of whether the property is exported directly from a participating province or routed through a non-participating province. Therefore, amendments to the above provisions are proposed, effective April 1, 1997, to permit the notional input tax credit for the provincial component in these circumstances.

Lease of Property that was Seized, Repossessed or Transferred

Subsections 183(8) and 184(7) allow a creditor or an insurer to claim a notional input tax credit in respect of seized, repossessed or transferred personal property in certain circumstances where the property is subsequently supplied by way of lease, licence or similar arrangement. Where a supply of property is made by way of lease, licence or similar arrangement, subsection 136.1(1) (added by c. 10, S.C., 1997) deems the supplier to have made a separate supply of the property for each lease interval. Consequently, a question may arise as to which lease interval (i.e., supply) the notional input tax credit relates.

As was the case before the introduction of section 136.1, the intent is that the creditor or insurer be allowed to claim a one-time notional input tax credit when first supplying the property by way of lease, licence or similar arrangement based on its fair market value at the time it was seized, repossessed or transferred. Therefore, amendments to subsections 183(8) and 184(7) are proposed, with effect from April 1, 1997, to allow such a one-time notional input tax credit based on where the property was seized, repossessed or transferred and where the supply of the property for the first lease interval is made by the creditor or the insurer.

For example, if a creditor seizes property in a participating province and the place-of-supply rules determine that the supply of the property by the creditor for the first lease interval is made in a participating province, and all of the other conditions in subsection 183(8) have been met, the creditor should be able to claim a one-time notional input tax

credit equal to 15 per cent of the fair market value of the property (as that value is determined at the time the property was seized). The creditor would be deemed to have paid this amount immediately before the time at which the supply for the first lease interval is made according to the rules of subsection 136.1(1).

FINANCIAL SERVICES AND INSTITUTIONS

Corporate Take-overs

Subsection 186(2) of the Act applies in situations where a corporation acquires or proposes to acquire all or substantially all of the voting shares of the capital stock of another corporation that is engaged exclusively in commercial activities. In this case, the purchasing corporation is allowed to claim input tax credits for property and services it acquires in relation to the take-over or proposed take-over.

Existing subsection 186(2) refers to tax payable only on supplies made to the purchasing company. The proposed amendment to this subsection reflects the fact that tax might also become payable by the company upon bringing property into a participating province or importing property.

This amendment is proposed to come into force on April 1, 1997.

Passenger Vehicles Leased by Selected Listed Financial Institutions (SLFI's)

Under section 235 of the Act, an amount, which includes the provincial component of the HST where applicable, is required to be added to a registrant's net tax in respect of a leased passenger vehicle where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*. However, the draft regulations under section 225.2 (released March 21, 1997), which set out rules pertinent to the calculation of net tax by SLFI's, also require that an amount in respect of the provincial component of the HST on the lease cost be added to an SLFI's net tax. Therefore, an amendment to section 235 is proposed, with effect from April 1, 1997, so that the amount required to be added to net tax under section 235 by an SLFI is calculated only on the amount of the GST or the 7 per-cent federal component of the HST paid or payable by the SLFI.

Rebates for Selected Listed Financial Institutions (SLFI's)

Proposed section 263.01 of the Act (released in draft form on March 21, 1997) sets out a general rule restricting an SLFI from claiming rebates of the provincial component of the HST paid or payable by the SLFI in respect of business inputs. This reflects the fact that the tax is taken into account in element F of the formula for the adjustment to the SLFI's net tax under subsection 225.2(2). In other words, instead of being rebated, the provincial component of the HST paid or payable is deducted from the net tax remittable by the SLFI.

Proposed section 263.01 obviates the need for existing section 261.5, which also denies certain rebates to SLFIs but is overly restrictive in relation to rebates in respect of personal-use property or services acquired or imported by SLFIs that are individuals. Therefore, it is proposed that section 261.5 be repealed as of April 1, 1997, the effective date of proposed section 263.01.

P&C Insurers: Prescribed Amounts of Tax and Claiming of ITC's

Subsection 169(3) of the Act restricts a person from claiming input tax credits (ITC's) in respect of the provincial component of the HST that becomes payable at a time when the person is a selected listed financial institution (SLFI). This is because, generally, an SLFI deducts such amounts from its net tax in accordance with the rules set out in section 225.2. However, SLFI's are not entitled to make such deductions in respect of prescribed amounts of tax. Specifically, the 8 per-cent component of the HST paid on certain inputs related to the settlement of property and casualty insurance claims is excluded from the adjustment to net tax calculated under section 225.2.

The policy intention is to allow ITC's for tax payable in respect of inputs related to the settlement of such claims to the extent that the settlement is in the course of commercial activities of the insurer (e.g., where the insurance policy is that of a non-resident person and relates to risks that are ordinarily situated outside Canada). Therefore, an amendment to subsection 169(3) is proposed to remove, as of April 1, 1997, the ITC restriction with respect to these prescribed amounts.

Adjustment to Net Tax by an SLFI – Supplies Exempt under Section 150 Election

By virtue of paragraph (*b*) of the description of A in the formula in subsection 225.2(2) of the Act, a selected listed financial institution (SLFI) that is the recipient of a supply that is deemed under section 150 to be a supply of a financial service must add to its net tax an amount equal to the GST or the federal component of the HST that would have been payable on the supply if it had not been made under the election. There is an exception to this requirement where an election under subsection 225.2(4) has been made, in which case an alternative adjustment is required under paragraph (*c*) of the description of A.

Paragraph (*b*) of the description of A and of B in the formula refers to amounts of tax prescribed for the purposes of paragraph (*a*) of the description of A. However, in both cases, this reference in paragraph (*b*) is superfluous since only amounts of tax that actually became payable or were paid are prescribed for purposes of paragraph (*a*) and no tax would have been payable or been paid in circumstances in which section 150 applies. Therefore, an amendment is proposed, with effect as of April 1, 1997, to remove the reference in paragraph (*b*) of the descriptions of A and B to the prescribed amounts of tax. It is also proposed that the superfluous references be removed in the transitional provisions in subparagraph 363(2)(*c*)(ii) and paragraph 363(2)(*d*). These changes are proposed to come into force on March 20, 1997, the day on which sections 225.2 and 363 were assented to. In addition, the superfluous reference is removed from subsection 225.2(2) as it reads for the purpose of determining the net tax of an SLFI for the reporting period of the SLFI that straddles April 1, 1997.

PUBLIC SERVICE BODIES

Streamlined Accounting Method for Charities under Section 225.1

Section 225.1 of the Act sets out a streamlined accounting method by which registrants that are charities (within the meaning of subsection 123(1)) calculate their net tax. Under this method, the charity includes in its net tax only 60 per cent of the tax collectible on "specified supplies" (which includes most taxable supplies other than sales of capital and real property). The inclusion of only 60 per cent of that tax is in lieu of claiming input tax credits on most inputs. The charity also includes in net tax 100 per cent of the tax collectible on sales of capital and real property and other specifically enumerated supplies.

Tax collectible on supplies deemed under subsection 177(1) or (1.2) to be made by a charity acting as an agent should be included in full in the charity's net tax. To achieve this, amendments are proposed to exclude such supplies from the definition "specified supply" and to add references to the supplies under subparagraph (*b*)(iii) of the description of A in the formula in subsection 225.1(2). These amendments are proposed to apply for the purpose of determining net tax for reporting periods ending after Announcement Date.

As well, a proposed amendment to the formula in subsection 225.1(2) would enable a charity to claim certain input tax credits in two additional circumstances. Where the charity as principal sells property through an auctioneer and that sale is deemed to be made by the auctioneer, the auctioneer is required to include 100 per cent of the tax collectible on the sale in the auctioneer's net tax. The charity should not be denied an input tax credit for tax payable by it in respect of the property if it acquired, imported or brought the property into a participating province for the purpose of the sale. It is proposed that subsection 225.1(2) be amended to enable the charity to claim the input tax credit in that circumstance. This amendment would apply, for the purpose of determining the net tax of a charity for reporting periods beginning after 1996, to any property deemed under subsection 177(1.2) (as enacted by c.10, S.C., 1997) to have been supplied by an auctioneer acting as agent of the charity (i.e., generally to supplies made after April 23, 1996).

The other additional circumstance in which the charity would be entitled to claim an input tax credit is where the charity acts as agent in making a supply of property in circumstances in which subsection 177(1) or (1.2) applies and the charity is deemed to have acquired the property and to have paid tax by the operation of paragraph 180(*e*). This amendment would likewise apply, for the purpose of determining the net tax of the charity for reporting periods beginning after 1996, in relation to property deemed under subsection 177(1) or (1.2) (as enacted by c.10, S.C., 1997) to have been supplied by the charity (i.e., generally to property deemed to have been supplied after April 23, 1996).

Direct Cost Exemption

Section 5.1 of Part V.1 of Schedule V to the Act , and section 6 of Part VI of that Schedule, each describe a supply, made by a charity and public service body respectively, that is exempt based on the amount charged for the supply in relation to the "direct cost" of the supply. The expression "direct cost" is defined in subsection 123(1) of the Act.

The direct cost of a supply includes provincial taxes, duties or fees prescribed under section 154 of the Act (e.g., the provincial sales taxes). It is proposed that the definition be amended to exclude any portion of such provincial tax, duty or fee that is recovered or recoverable by the charity or body. An exception to this exclusion would be made where the provincial tax is the Québec Sales Tax (QST) and the charity or body is a QST registrant at the time that the QST became payable.

This change in how prescribed provincial taxes, duties and fees are taken into account in computing the direct cost of a supply would apply to supplies made after Announcement Date. Its application to supplies made on or before Announcement Date would depend on whether the charity or body treated the supply as taxable or exempt. Since the exclusion of recoverable provincial tax from the definition of "direct cost" would have the effect of lowering the direct cost of a supply, it is relieving in nature to any charity or body that wished to treat its supplies as taxable and avoid being caught by the exemption. Such a supplier's prices would not have had to have been as high as they otherwise would to exceed the exemption threshold. On the other hand, this change would have a non-relieving effect in the case where the charity or body wished to treat the supply as exempt (i.e., did not charge or collect tax) since the lower direct cost would mean that the charity or body might have had to charge lower prices than were actually charged to fall below the exemption threshold.

Therefore, in all cases where the charity or body charged or collected tax in respect of the supply, the amendment to the definition "direct cost", including the exception made for the QST, is proposed to apply to supplies made after Announcement Date, as well as to supplies made on or before Announcement Date, for which consideration becomes due after 1996. In the case where the charity or body did not charge or collect tax on the supply, it is proposed that this change generally not apply to supplies made on or before Announcement Date. The exception is for supplies invoiced between January 1, 1997 and April 1, 1997. In those cases, the exclusion from the definition of "direct cost" for recoverable provincial tax (without the exception for the QST) does apply pursuant to a previous amendment (enacted by c. 10, S.C., 1997).

Amendments to the exempting provisions themselves are also proposed. The amendments ensure that it is the amount of direct cost minus both the QST and the GST or HST that is compared with the tax-excluded selling price to determine if that price exceeds the exemption threshold in the case where the supplier has treated the supply as taxable. For example, if a non-profit organization charged or collected tax on a sale of an item of inventory but the pre-tax price charged by the organization were below the QST and GST/HST-excluded direct cost to the organization of acquiring the inventory, the supply nevertheless would be exempt. As a result, the tax collected by the organization

in this case would have been collected in error and the organization would not be entitled to claim an input tax credit for the tax paid on the acquisition of the inventory.

Since this change to the treatment of the QST in determining whether the exemption criterion is met is only applicable in cases where the supplier chooses to treat the supply as taxable, it has a relieving effect because it lowers the threshold for the exemption and thereby makes it easier for the supplier to avoid falling under the exemption. Therefore, this change is proposed to apply retroactively to all supplies for which consideration becomes due after 1996.

Rebates for Public Service Bodies

Section 259 of the Act provides for partial rebates of tax to public service bodies, including provincial government emanations such as hospital and school authorities, municipalities, universities and public colleges. These rebates were introduced at the inception of the GST to offset the budgetary impact that would otherwise have resulted from moving from the manufacturers' sales tax to the GST.

In the case of the transition from the provincial retail sales taxes to the HST in the participating provinces, the impact on the budgets of these bodies will vary from one entity to another and among participating provinces, depending on such factors as the retail sales tax rate and exemptions that existed under the former sales tax system and the provincial funding arrangements in each province. Consequently, for purposes of a rebate in respect of the provincial component of the HST, the government of each participating province established the eligibility and rebate rate for each category of public service body in that province, which is reflected in subsections 259(4.2) and (4.3) of the Act (added by c.10, S.C., 1997).

Under the existing legislation, no rebate of the provincial component of the HST is provided to hospital or school authorities, universities, colleges or municipalities in Newfoundland and Labrador (except in the case of certain designated municipalities as set out in subsection 259(4.3)). An amendment is proposed to enable such entities in that province that also qualify as charities, public institutions or qualifying non-profit organizations (within the meaning of section 259) to claim a rebate, as of April 1, 1997, equal to 50 per cent of the otherwise non-recoverable provincial component of the HST incurred in respect of inputs related to any exempt activities they undertake otherwise than in the course of fulfilling their responsibilities as a local authority or operating a public hospital, school, university or public college, as the case may be.

For example, a hospital authority in Newfoundland that is a charity or satisfies the definition of "qualifying non-profit organization" might also operate a nursing home. The proposed amendment would entitle the authority to a 50 per-cent rebate of the provincial component of the HST incurred on expenses related to the nursing home. This rebate would parallel the existing 50 per-cent rebate of the federal component that is already provided in respect of the same activities. The hospital authority would continue to be eligible for the 83 per-cent rebate under section 259 only in respect of the 7 per-cent GST or the federal component of the HST incurred in respect of inputs related to the

operation of the public hospital.

A consequential amendment is proposed to restructure subsection 259(4.2) so that the exceptions to the general rule of excluding the provincial component of the HST from the calculation of "non-creditable tax charged" and "total tax charged" are set out in a separate new subsection (subsection (4.21)). That new subsection explicitly refers to charities and qualifying non-profit organizations that are not selected public service bodies (within the meaning of section 259).

Another proposed amendment adds new subsection 259(4.01), which provides, for greater certainty, that any rebate based on the formula in subsection 259(4) is calculated on amounts of otherwise unrecoverable total tax charged. This amendment would apply to rebates claimed in applications received at a Revenue Canada office on or after Announcement Date.

An amendment is also proposed to replace the reference in paragraph 259(4.1)(*d*) to a single amount determined by the formula in subsection 259(4) by a reference to the total of all amounts determined by the formula. This change is consequential to the recent amendments (enacted by c. 10, S.C., 1997) to subsection 259(4) and would come into force on April 1, 1997.

Finally, a minor wording change is proposed for subsection 259(5). That subsection sets out the application requirement for the rebates under section 259. The change removes the reference to "non-creditable tax charged" since that expression is not used in subsection 259(4). This correction would apply as of January 1, 1991, the effective date of the amendments to section 259 that added the concept of "non-creditable tax charged" and introduced the separate rebate provision for designated municipalities under subsection 259(4).

MISCELLANEOUS ISSUES

Employee and Partner Rebates

An amendment is proposed to correct an editorial error that appears in paragraph 253(1)(*a*) of the English version of the *Excise Tax Act*, as amended by the Act that implemented the HST (c. 10, S.C., 1997). As explained in the technical notes to that amending Act, Part II of that Act amended paragraph 253(1)(*a*) only for the purpose of adding a reference to property brought into a participating province. However, in so doing, all of paragraph (*a*) was inadvertently repealed as opposed to only the portion before subparagraph (i) thereof, resulting in an incomplete provision in the English version as presently worded (the French version is correct). Therefore, subparagraphs 253(1)(*a*)(i) and (ii) of the English version are being added back as of April 1, 1997, the day the amendment to paragraph 253(1)(*a*) came into force.

Osteopathic and Speech Therapy Services

Pursuant to chapter 10 of the Statutes of Canada, 1997, osteopathic and speech therapy services were scheduled to be removed, as of January 1, 1998, from the list of services that are exempt in all provinces from the GST or HST under section 7 of Part II of Schedule V to the *Excise Tax Act*. One of the bases for this exemption is that the service is rendered in the practise of a profession that is regulated as a health care profession by the governments of at least five provinces.

An amendment is proposed to continue this exemption for osteopathic services, reflecting the fact that the profession is currently regulated in at least five provinces. An amendment is also proposed to defer for one year the removal of speech therapy services from this exemption. While the speech therapy profession is currently regulated in only four provinces, this proposed amendment recognizes that the regulation of speech therapy is under active consideration in at least one additional province. In the event that speech therapy becomes regulated in a fifth province by January 1, 1999, a further amendment would be introduced to ensure that these services continue to be exempt in all provinces after that date.

Provincial Product Taxes

Section 154 of the Act provides that the consideration for a supply of property or a service includes certain federal and provincial taxes, duties and fees (other than those prescribed by regulation) payable by the recipient or payable or collectible by the supplier. The reference to taxes collectible by suppliers is intended to ensure that the provision applies equally to supplies of taxable products by persons who act as collection agents in respect of the taxes.

Some specific taxes (such as tobacco and fuel taxes) that are imposed under provincial statutes depend on a collection mechanism that imposes obligations on wholesalers of the products. However, the various provincial statutes vary in the wording used to describe the amounts collectible by wholesalers in their capacity as collection agents.

To avoid any ambiguity in the application of section 154 to the specific product taxes imposed in different provinces, an amendment is proposed to clarify that the consideration for a supply of property or a service includes amounts collectible by suppliers that are equal to or are collectible as, on account of, or in lieu of, a tax, duty or fee that is imposed by a provincial statute in respect of the supply, consumption or use of the property or service. This amendment would apply for the purpose of determining the consideration for supplies made after Announcement Date.

Foreign Conventions

Subsection 252.4(1) of the Act provides a rebate to a sponsor of a foreign convention for tax paid in respect of certain inputs relating to the convention. Paragraph (1)(*c*) was amended (by c. 10, S.C., 1997) to add a reference to property brought into a participating province. At the same time, the previous reference to "services that are imported" was replaced with the more appropriate reference to an imported taxable supply (within the

meaning of section 217) of services, since the concept of importation in the Act generally applies to tangible property. However, the amendment failed to encompass intangible personal property as well as services. Therefore, it is proposed that the paragraph be amended to refer to an imported taxable supply of property or services. Since the former change was not intended to narrow the scope of the provision, this amendment is proposed to apply as of April 1, 1997, the effective date of the former change.

REGULATIONS

Amalgamation and Winding-Up of Corporations

Section 271 of the Act sets out rules applicable where corporations are merged or amalgamated to form a new corporation. Similarly, section 272 of the Act provides rules applicable where a parent corporation winds up a subsidiary corporation. Sections 271 and 272 provide that, for prescribed purposes, the new corporation or the parent corporation is deemed to be the same corporation as, and a continuation of, the former corporation or the subsidiary, as the case may be.

The Amalgamations and Windings-Up Continuation (GST) Regulations prescribe the provisions of the Act for which the deeming under sections 271 and 272 of the Act applies. These Regulations are being amended to conform with changes to various provisions in the Act. The proposed amendments add references to provisions of the Act that were added or amended by chapter 27 of the Statutes of Canada, 1993 and delete a reference to a repealed provision, concurrent with the changes to the Act.

The Regulations are also proposed to be amended, as of the day after Announcement Date, to prescribe provisions dealing with the transfer of a security interest, the small supplier threshold for charities and public institutions, the overpayment of refunds or rebates for bankrupts, and bankruptcies and receiverships in general.

Finally, the short title of these Regulations is being amended to reflect the implementation of the HST on April 1, 1997.

Artists' Representatives

Subsection 177(2) of the Act provides special rules in respect of supplies made by prescribed collectives on behalf of other persons of intangible personal property (such as reproduction rights) relating to the product of an author, performing artist, painter, sculptor, or other artist. These rules are intended to ease compliance with the GST and HST by the artists' collectives and the artists. The collectives prescribed for this purpose are listed in the *Artists' Representatives (GST) Regulations.*

The organizations on the list are empowered under the *Copyright Act* to collect royalty fees and pass them on to their respective members. Subsection 177(2) provides that

prescribed collectives charge and remit the GST/HST on the supply of intangible personal property in respect of the product of an artist. The supply is deemed to be made by the collective and is therefore taxable, regardless of whether the principal on whose behalf the supply is made is a GST/HST registrant. No tax is charged when the prescribed collective, in turn, passes on the royalties to the principal.

The schedule to the *Artists' Representatives (GST) Regulations* is proposed to be amended by adding the Directors' Guild of Canada Inc. and its district councils, as of January 1, 1997, and the Société collective de gestion des droits des producteurs de phonogrammes et de vidéogrammes du Québec, as of August 1, 1991.

In addition, the short title of these Regulations is changed to reflect the implementation of the HST on April 1, 1997.

Credit and Debit Note Information

The *Credit Note Information Regulations* prescribe information that must be contained in a credit note in respect of an adjustment, refund or credit of GST or HST on a supply in order for the supplier to claim, under section 232 of the Act, an equivalent deduction in determining net tax. Draft amendments to the Regulations were previously released on April 23, 1996. Those amendments are re-introduced. Additional changes are proposed to simplify and streamline the Regulations. The Regulations are also being amended as a result of the introduction of the HST.

As provided in the draft Regulations released on April 23, 1996, amendments are proposed to extend the application of the Regulations to debit notes, effective as of January 1, 1991. These amendments include a change in the title of the Regulations to refer to both credit and debit notes and changes to section 3 of the Regulations to refer to the information that is to be contained in a credit note or debit note. The short title to the Regulations is further amended to refer to the HST after March 1997.

In addition, the amendments proposed on April 23, 1996 extending the application of the Regulations to notes issued by intermediaries are re-introduced. These amendments are consistent with those proposed for the *Input Tax Credit Information Regulations*. They permit a credit or debit note issued by an intermediary acting for a supplier to satisfy the documentation requirements imposed on the supplier. The references to the intermediary in respect of a supply would apply in relation to supplies made after April 23, 1996.

Paragraph 3(*e*) of the Regulations, as proposed in the April 23, 1996 draft, deals with notes relating to patronage dividends that are issued in circumstances in which subsection 233(2) of the Act applies. This paragraph is further amended to take into account changes to section 233 resulting from the introduction of the HST. The information requirements in this case are being streamlined to simply require a disclosure of the portion of the dividend that represents the adjustment, refund or credit of tax. This change would apply to credit notes and debit notes issued after March 1997.

Finally, additional streamlining of the information requirements with respect to other credit notes and debit notes is proposed for notes issued after March 1997. Specifically,

it is proposed that the existing requirements under subparagraphs 3(*g*)(i) to (iv) of the Regulations (renumbered as 3(*f*)(i) to (iv) in the April 23, 1996 draft) be repealed. As a result, it would no longer be necessary for the note to refer to the related invoice or agreement or to provide a description of the relevant supply or the date on which tax became payable or was paid in respect of the supply.

Proposed new paragraph 3(*f*) provides that, in all cases, the information requirements under that paragraph are satisfied if the amount of the tax adjustment for which the note is issued is shown separately. However, there is another disclosure option where the note is issued for a total amount that includes the amount by which both the consideration and the tax in respect of one or more supplies is reduced. In that case, the note could alternatively include a statement to the effect that the total amount for which the note is issued includes the tax adjustment.

However, if the amount of the tax adjustment is not indicated in the note, a further requirement is proposed to indicate the total of the rates of tax applicable to each supply for which a tax adjustment is made and a breakdown of the total amount for which the note is issued between the amount that relates to supplies taxable at the rate of 7 per cent and the amount that relates to supplies taxable at the total rate of 15 per cent. A similar requirement is proposed in the draft *Input Tax Credit Information Regulations* (see commentary on those Regulations below). These new requirements for credit and debit notes would apply only to notes issued after January 1998 in order to provide issuers time to make any necessary changes to their reporting practices.

Deduction For Provincial Rebate

Subsection 234(3) of the Act allows a registrant who makes a supply of an item in a participating province to deduct, in determining the registrant's net tax, a prescribed amount that the registrant pays or credits to the recipient in respect of the supply. The draft *Deduction for Provincial Rebate (GST/HST) Regulations* prescribe an amount for this purpose in the case of printed books, audio recordings that are substantially spoken readings of printed books and bound or unbound printed versions of scripture. The prescribed amount is the amount of the rebate provided under an Act of that province in respect of the HST payable on the item. The related Acts of the participating provinces provide for a rebate equal to the provincial component of the HST on these items.

Together, subsection 234(3) and these Regulations provide the mechanism for delivering a point-of-sale rebate of the provincial component of the HST on the qualifying items. The Regulations would come into force on April 1, 1997.

Federal Book Rebate

Section 259.1 of the Act provides for a 100 per-cent rebate of the GST, or of the federal component of the HST, paid by specified institutions on purchases or importations of certain reading materials and audio recordings of printed books. Entities qualifying to receive the rebate include schools, universities, public colleges and municipalities as well as charities and substantially government-funded non-profit organizations that operate a

public lending library.

In addition, the section provides that the rebate is available to prescribed charities and non-profit organizations whose primary purpose is the promotion of literacy. The draft *Federal Book Rebate (GST/HST) Regulations* prescribe the following organizations, which meet this criterion and have requested to be prescribed.

- *Core Literacy Centre, Waterloo Region Inc.;*
- *Haldimand-Norfolk Literacy Council;*
- *Le Centre La Magie Des Lettres Ottawa Inc.*
- *Literacy Council of South Temiskaming;*
- *Literacy Society of South Muskoka;*
- *North Algoma Literacy Coalition;*
- *Quinte Literacy Group; and*
- *Winnipeg Volunteer Reading Aides Inc.*

The listed organizations would qualify for a rebate in respect of tax that becomes payable after October 23, 1996.

Input Tax Credit Information

The *Input Tax Credit Information Regulations* prescribe the information requirements necessary to support an input tax credit claim by a registrant. Amendments to these Regulations, reflecting previously announced changes as well as changes consequential to the introduction of the HST, were released in draft form on March 21, 1997.

Among the changes arising out of the implementation of the HST was the addition of the requirement to indicate, on invoices, receipts or agreements for amounts that include the tax on one or more non-zero-rated taxable supplies, the total rate at which tax applied (i.e., 7 per cent or 15 per cent) to each of those supplies. This is necessary in order to compute the amount of the related input tax credits.

A further refinement is proposed to ensure that the information is sufficient to determine the related input tax credits. If not all of the non-zero-rated taxable supplies covered by the invoice, receipt or agreement are subject to the same rate of tax, it is also necessary that there be an indication of what portion of the total tax-included amount is attributable to those supplies taxable at the rate of 7 per cent and those taxable at the rate of 15 per cent. Therefore, the draft amendments to the Regulations are modified prospectively to specify this information with respect to supplies made after January 1998. Of course, the general rule under paragraph 169(4)(*a*) of the Act still requires that, in any event, the recipient obtain sufficient evidence to enable the amount of the input tax credit to be determined. In most cases, the required breakdown would already be apparent from the invoice, receipt or agreement.

Mail and Courier Imports

Normally, goods valued at or below $20 can be imported by mail or courier free of the

GST or HST. However, the *Mail and Courier Imports (GST) Regulations* prescribe imported goods on which the GST or HST applies regardless of value. Such goods include publications supplied by persons who are not registered for the GST.

The proposed amendments to the Regulations replace references to specific types of publications with a reference to goods that are prescribed for the purposes of section 143.1 of the Act, applicable to goods imported after Announcement Date (reference should also be made to proposed amendments to that list of prescribed goods under the *Publications Supplied by a Non-resident Registrant Regulations* described below). The goods prescribed under that section include all publications currently prescribed by the *Mail and Courier Imports (GST) Regulations*. However, the effect of the proposed cross-referencing to goods prescribed under section 143.1 would be to also include other goods that accompany a publication when imported and are prescribed for the purposes of section 143.1.

Another proposed amendment to the *Mail and Courier Imports (GST) Regulations* replaces a reference to "alcoholic beverages, cigars, cigarettes and manufactured tobacco" with a reference to "excisable goods and wine" applicable to importations after Announcement Date. This proposed wording is intended to cover exactly the same group of goods as does the existing wording but is consistent with references to these goods made elsewhere in the *Excise Tax Act* (e.g., subsection 252(1)) and avoids potential ambiguities in the interpretation of "alcoholic beverages" and "tobacco". The term "excisable goods" is already defined for GST/HST purposes in subsection 123(1) of the Act.

Finally, the title to these Regulations is amended to reflect the introduction of the HST as of April 1, 1997.

Place of Supply

Section 4 of the draft *Place of Supply (GST/HST) Regulations* (released on March 21, 1997) provides that a supply of a service of arranging for the release (within the meaning assigned by the *Customs Act*) of imported goods is made in a province if the goods are situated in the province at the time of their release. It is intended that this section apply to any services that are integral to the entry process. It is therefore intended that such services include a service of gathering relevant information, completing and submitting the appropriate documentation and/or the payment of any applicable taxes, duties, security or interest or penalties, whether the service is performed prior to or following the release from Customs of the imported goods.

To clarify this intended scope, the wording in the draft Regulations will be modified to specify that this place-of-supply rule applies to a service of arranging for the release (within the meaning assigned by the *Customs Act*) of imported goods or fulfilling, in respect of the importation, (whether before, at the time of or after the release) any accounting, reporting or information requirements imposed under that Act or the *Customs Tariff* or any requirements under either of those Acts to remit any amount. However, specifically excluded would be anything done in relation to an objection, appeal, re-

determination, re-appraisal, review, refund, abatement, remission or drawback, or any request therefor, since those services are not integral to the entry process itself though they may be consequential to it. For those services, the general place-of-supply rules applicable to services will continue to apply.

Since this is the only proposed change to the March 1997 draft, the Draft Regulations are not being reissued at this time.

Public Service Body Rebates

Under the GST and HST, public service bodies, which includes hospitals, schools, universities and public colleges, municipalities, charities, public institutions and substantially government-funded non-profit organizations, are entitled to claim partial rebates of otherwise unrecoverable tax paid on their purchases. Section 259 of the Act sets out the rules relating to these rebates and provides the authority to prescribe the rebate rates applicable to each class of public service body, the property and services in respect of which rebates are disallowed and rules for calculating the rebates. The *Public Service Body Rebate (GST) Regulations* contain these prescriptions.

This draft of the Regulations incorporates a number of previously announced amendments. First, as announced in the March 27, 1991 Department of Finance Press Release, the Regulations are proposed to be amended, effective January 1, 1991, to clarify that the amounts considered "government funding" of a non-profit organization do not include loans from governments, other than forgivable loans.

A further refinement is proposed, to apply as of Announcement Date, to the definition "government funding". The proposed amendment is to clarify that amounts received by an organization from an intermediary are government funding only if they would be considered to be government funding if they were instead paid by a grantor directly to the organization for the same purpose as the amounts were paid by the intermediary. For example, if an intermediary uses amounts received from a government to pay consideration for property or services supplied to it, the amounts would not constitute government funding to the supplier since they would not qualify as such if they were paid by the government to the supplier as consideration for property or services supplied to the government.

Second, as announced in the March 21, 1997 Department of Finance Press release, it is proposed that the definition "consideration" be added for the purposes of these Regulations to take into account the simplified rules applicable to trade-ins under subsection 153(4) of the Act (added by c.10, S.C., 1997). Under those rules, where property (referred to as the "trade-in") is accepted as full or partial consideration for a supply of other property, the consideration for that supply is deemed to be an amount that is net of the trade-in value. Therefore, the supplier must calculate the GST or HST on the net amount. However, that net amount is not an appropriate measure for determining the total value of supplies made by the supplier, which is used in the formulae for calculating the supplier's percentage of government funding and eligibility thresholds under these Regulations. The addition of the definition "consideration" is proposed to apply for the purpose of determining rebates in respect of claim periods beginning after Announcement Date.

Third, as announced in the December 9, 1992 Department of Finance Press Release, it is proposed that the Regulations be amended, effective January 1, 1991, to enable rebates to be claimed by prescribed government organizations that pay the GST or HST and that would satisfy the definition "non-profit organization" were they not agents of the Crown. As a result of being prescribed, they are entitled to apply for rebates under section 259 of the Act as long as they continue to meet the government-funding test.

Fourth, as announced in the December 9, 1992 Department of Finance Press Release, the Regulations are proposed to be amended to prescribe certain property and services deemed to have been acquired, imported or brought into a participating province after December 11, 1992 by a public service body acting as an operator of a joint venture on behalf of other participants in the venture. Specifically, the body would not be entitled to a public service body rebate in respect of these deemed acquisitions, importations or bringing into a participating province of property or services unless all the other participants in the joint venture would likewise have been entitled to such a rebate if the property or services were acquired, imported or brought into the province by them directly.

As announced in the March 30, 1993 Department of Finance Press Release, amendments are also proposed to add simplified rules for calculating the public service body rebate for small organizations. Under these rules, the amount of tax paid or payable by a qualifying public service body in respect of an input is, for the purposes of calculating the rebate, deemed to be the amount determined by multiplying a factor (7/107 prior to the HST) to the total of the GST or HST-included purchase price or rent and any import duties, non-recoverable prescribed provincial tax, gratuities and late payment penalties also paid by the body in respect of the input.

As a consequence of the implementation of the HST, the 7/107 factor is proposed to be adjusted, as of April 1, 1997, where the rebate is in respect of acquisitions or importations to which the HST applies. The factor would be 7/115 in respect of the federal component of the HST and 8/115 in respect of the provincial component of the HST. Of course the extent to which the body would be entitled to claim a rebate in respect of the amount of the provincial component of the HST that is deemed to have been paid or become payable would be determined under section 259 of the Act, which reflects each participating province's decision whether to extend the rebate of the provincial component of the tax to that particular class of public service body in that province.

An amendment to the Regulations is also proposed to exclude from eligibility for the public service body rebates returnable containers (as defined by section 226 of the Act) where the body would have been denied input tax credits in respect of the containers if the body were otherwise in a position to claim input tax credits instead of rebates. This amendment would apply to rebates in respect of claim periods beginning after Announcement Date.

As a consequence of the new definition "charity" in subsection 123(1) of the Act, which excludes "public institutions" (also as defined in that subsection), references to "public institution" are added to these Regulations, as of January 1, 1997, to ensure that those institutions continue after that day to be treated in the same way under these Regulations.

The HST is imposed on property brought from a non-participating province (within the meaning of subsection123(1) of the Act) into a participating province otherwise than exclusively for use in commercial activities. Accordingly, references are added to these Regulations to cover situations where the HST is payable upon bringing property into a participating province and should be taken into account in determining the rebates payable under section 259 of the Act. These amendments would also apply as of the implementation date of the HST, April 1, 1997.

Finally, a number of cross-reference and wording changes are made to the Regulations solely to reflect amendments to the *Excise Tax Act* and *Income Tax Act* (enacted by c.27, S.C., 1993 and c.21, S.C., 1994, respectively). In addition, amendments are made to the French version of the Regulations to ensure consistency with the English version.

Imported Publications

Where certain publications are sent, by mail or courier, to addresses in Canada by a person registered to collect the GST, the supplies of the publications are deemed under section 143.1 of the Act to be made in Canada. Therefore, these publications are subject to the GST or HST in the same way as are supplies of domestic publications. This means that registered suppliers must collect tax on their subscription sales into Canada. In the absence of this provision, suppliers of foreign publications imported via mail or courier would not have to collect the GST or HST from customers. Instead, such imported publications would be taxed upon importation.

The *Publications Supplied by a Non-resident Registrant Regulations* prescribe the publications to which section 143.1 of the Act applies. The Regulations are being amended as a consequence of previously enacted amendments to the Act. Specifically, the provision of the Act under which these Regulations are made (formerly subsection 143(2)) has been re-numbered as section 143.1. The cross-reference to that provision in the Regulations is therefore amended accordingly. As well, the related provisions of the Act, including the registration requirement under subsection 240(4), were amended to apply to all registered persons who supply foreign publications in the manner indicated. Consequently, the Regulations are being amended to delete references to "non-resident", concurrent with the changes to the Act.

The effect of these changes to the Act and the Regulations is to ensure that, like non-residents, residents (other than small suppliers) who solicit orders in Canada for imported publications to be sent by mail or courier to persons in Canada are required to register and collect GST or HST directly from those customers. Accordingly, to ensure that the publications are not also taxed upon importation, the Regulations are proposed to be amended, effective as of the date of their publication, to provide that the resident supplier's registration number issued under subsection 241(1) of the Act must appear on the imported publication or its packaging consistent with the existing requirement for non-resident suppliers.

In addition, the cross-reference in the Regulations to a tariff item of Schedule I to the *Customs Tariff* is being replaced by a cross-reference to section 1 of Schedule VII to the

Excise Tax Act. This does not change the scope of the provision but avoids having to update the Regulations in future if the tariff item changes. It is also proposed that the reference in the Regulations to audio-cassettes that accompany imported publications be updated to refer instead to "audio recordings". These changes would come into force on Announcement Date.

Finally, the short title of these Regulations is also changed to reflect the implementation of the HST on April 1, 1997.

Streamlined Accounting

The *Streamlined Accounting (GST) Regulations* provide small businesses and public service bodies optional simplified methods of calculating their GST or HST remittances. Further refinements are proposed to the Regulations that were published in draft form on March 21, 1997.

Revised remittance rates for registrants using the Quick Method or the Special Quick Method of determining net tax were included in the March 1997 draft as a consequence of the introduction of the 15 per-cent HST in the participating provinces. However, those rates require further adjustment as they did not reflect the fact that, under the simplified methods, the rates are multiplied by tax-included values as opposed to the consideration for supplies. Table 1 of the Annex sets out the remittance rates adjusted downward that would apply as of April 1, 1997. Table 2 of the Annex sets out the remittance rates that are required to be adjusted upward. In those cases, it is proposed that the rates published in the March 1997 draft apply to reporting periods beginning on or before Announcement Date and the higher adjusted rates apply to reporting periods beginning after that day.

It should be noted that, where the pre-HST quick-method remittance rate applicable to a supplier was 2.5 per cent, the supplier's revised rate under the HST in respect of any supply made in a non-participating province through a permanent establishment of the supplier in a participating province is 0 per cent. Furthermore, the supplier in this case is entitled to a special credit in determining net tax. The credit is necessary to account for the fact that the supplier generally will be paying tax at the rate of 15 per cent on inputs but collecting tax on such supplies at the rate of only 7 per cent.

Consistent with the adjustments to the quick-method remittance rates noted above, the rate at which the special credit is calculated is proposed to be adjusted from 2.6 per cent, as announced in the March 1997 draft, to 2.1 per cent. The adjustment to the lower rate of 2.1 per cent would apply for the purpose of determining net tax for reporting periods beginning after Announcement Date. A concurrent amendment is proposed to the description of the credit under paragraph (*c*) of the description of C in the formula in amended subsection 17(1) of the Regulations to clarify that the credit is available only in the case where the quick-method remittance rate is zero.

A final adjustment to the quick-method rate is necessary in the case of supplies of printed books and other items in respect of which the supplier credits the recipient a provincial point-of-sale rebate and is thereby entitled to a deduction under subsection

234(3) of the Act. The intention is that the remittance rate in respect of these supplies remain the same as that prior to the introduction of the HST, provided the supplier rebates the 8 per-cent component of the HST on the supplies where applicable. However, proposed paragraph 15(5)(*b*) of the Regulations, as set out in the March 1997 draft, provided that the rate applicable to printed books and other items on which the provincial rebate is credited would be 2.5 per cent for all suppliers. This is inappropriate for suppliers to whom the 5 per-cent remittance rate applied prior to the HST.

To ensure that the remittance rate applicable to supplies of printed books and other eligible items in respect of which a provincial point-of-sale rebate is credited is not changed under the HST, new subsection 15(5.01) of the Regulations is proposed (subsection 15(5.01) as proposed in the March 1997 draft is renumbered as subsection 15(5.02)). New subsection 15(5.01) provides that the quick-method rate applicable to such supplies is to be determined as if the supplies were in all cases made in a non-participating province through a permanent establishment in a non-participating province. Under the proposed amendment, the 2.5 per-cent remittance rate would apply, as announced on March 21, 1997, to supplies made on or before Announcement Date for which consideration becomes due, or is paid without having become due, on or after April 1, 1997. The new rule under subsection 15(5.01) would apply only to supplies made after Announcement Date.

A number of amendments are proposed to the Quick Method and Special Quick Method to account for situations in which supplies are made by an auctioneer or other agent. First, an amendment is proposed to the calculation of the "basic threshold amount", which is used to determine the quick-method rate of a registrant.

Where a registrant makes a supply through an auctioneer, the consideration and tax collectible on that supply should be included in the "basic threshold amount" of the registrant for the purposes of determining the registrant's quick-method rate under paragraph 15(5)(*a*) of the Regulations, even where the auctioneer is deemed under subsection 177(1.2) of the Act to have made that supply instead of the registrant. This is to avoid distortions in the test of whether it is the rate generally applicable to goods providers or to service providers that should apply to the registrant.

On the other hand, if the auctioneer is using the Quick Method, the basic threshold amount of the auctioneer should exclude those sales made on behalf of a principal for purposes of determining the auctioneer's quick-method rate. These amendments are proposed to apply for the purpose of calculating the basic threshold amount used in determining the quick-method rate that applies to supplies made after Announcement Date.

Second, an amendment is proposed to the definition "specified supply" under both the Quick Method and Special Quick Method to ensure that a registrant using either of these methods and deemed under subsection 177(1) or (1.2) of the Act to have made a supply accounts for tax thereon at the rate of 7 per cent or 15 per cent, whichever is applicable. These amendments are proposed to apply to supplies made after Announcement Date.

The March 21, 1997 draft of the Regulations also proposed to amend the definition "specified supply" under both methods to ensure that, where an agent using either method has made an election under subsection 177(1.1) of the Act to account for the tax collectible on a supply made on behalf of another person, the agent accounts for that tax at the rate of 7 per cent or 15 per cent, whichever is applicable. However, since such supplies are not deemed under that subsection to be made by the agent, they do not fit the definition "specified supply". Instead, to achieve the same result, the formula for calculating net tax under each method is amended to explicitly include the full amount of tax collectible on the supplies in the agent's net tax. Consistent with the previous announcement of this measure, these amendments to the formulae would apply to supplies to which subsection 177(1.1) of the Act (as enacted by c.10, S.C., 1997), applies (i.e., generally to supplies made after April 23, 1996).

Additional amendments are proposed dealing with the case where a registrant using either method is deemed under subsection 177(1) or (1.2) of the Act to have made a supply of goods acting as agent for another person. If the other person has incurred tax on the importation of the goods and section 180 of the Act operates to deem the registrant to have paid that tax, the amendments would enable the registrant to claim an input tax credit for that tax.

Finally, amendments to both the Quick Method and Special Quick Method are proposed to deal with sales by auctioneers. The amendments would allow a registrant using either of these methods to claim input tax credits in respect of goods acquired, imported or brought into a participating province by the registrant for the purpose of sale through an auctioneer in circumstances in which the auctioneer will be deemed under subsection 177(1.2) of the Act to be making the supply. This reflects the fact that, in such circumstances, the auctioneer is required to account for tax on the supply at the general rate of 7 per cent or 15 per cent, whichever is applicable. These changes are proposed to apply retroactively to all cases where subsection 177(1.2) (as enacted by c. 10, S.C., 1997) applied (i.e., generally to supplies made after April 23, 1996).

One other modification to the former draft of these Regulations is the proposed amendment to the general rule in subsection 24(1) of the Regulations. That subsection currently specifies that subsections 225(2) to (5) of the Act apply, with any necessary modifications, for the purpose of determining net tax under any of the streamlined accounting methods prescribed by the Regulations. Subsection 24(1) is being amended to refer only to subsections 225(2) to (3.1) of the Act. The reference to the input tax credit restrictions in subsections 225(4) and (5) of the Act is redundant since those restrictions, like other restrictions on the claiming of input tax credits, apply in any event as they are not dependent on the formula used to calculate net tax.

Taxes, Duties and Fees

The GST and HST are calculated on the "consideration" for a product or service. The consideration is, generally, equal to the price of the property or service. However, pursuant to section 154 of the Act, it also includes all federal and provincial taxes, duties and fees payable by the recipient or payable or collectible by the supplier, other than

those payable by the recipient and specifically excluded from the tax base by being prescribed by the *Taxes, Duties and Fees (GST) Regulations*.

Proposed amendments to these Regulations reflect the repeal of the *Meals and Hotels Tax Act* of Quebec as of January 1, 1991 and the replacement of the *Retail Sales Tax Act*, *the Amusement Tax Act*, the *Broadcast Advertising Tax Act*, and the *Telecommunication Tax Act* by *An Act respecting the Québec sales tax* on July 1, 1992. Another amendment replaces the reference to the *Health Services Tax Act* of Nova Scotia with a reference to the *Revenue Act* of that province as of April 1, 1996. As of April 1, 1997, that reference is again changed to item 1 of Schedule VIII to the *Excise Tax Act*, which sets out the HST rate for the province of Nova Scotia.

The Regulations are also being amended to prescribe additional provincial taxes. Specifically, the list of prescribed taxes in respect of transfers of real property is to be amended to include the special duties levied under the *Taxation Act* of the province of Québec, applicable to transfers of real property after October 8, 1993. Also added are the utilities taxes levied under *The City of Winnipeg Act*, as of January 1, 1991, the surcharges imposed under *The Power Corporation Act* on supplies of electricity and natural gas by the Saskatchewan Power Corporation, effective two weeks from Announcement Date, and the amusement taxes imposed under *The Urban Municipality Act* of Saskatchewan, as of April 1, 1991.

Additional changes are made to reflect the implementation, as of April 1, 1997, of the HST, including the addition, to the list of prescribed taxes, of Nova Scotia's transitional tax on motor vehicles and heavy equipment, which was introduced as a consequence of the replacement of the retail sales tax with the HST in that Province.

Finally, a number of amendments to the Regulations are being made to update or specify more precisely various references to provincial legislation, including correcting the previous omission of the references to the *Conditional Sales Act* and the *Registration of Deeds Act*, both of Newfoundland.

Value of Imported Goods

The *Value of Imported Goods (GST) Regulations* prescribe the manner of determining the value of imported goods to which the GST or HST applies in certain circumstances. Normally the GST or HST applies to the value of the goods for the purposes of customs duties plus all duties and excise taxes payable on those goods. These Regulations prescribe the method of determining the value for GST or HST purposes of carrier media on which software is stored, goods that are imported temporarily and goods that are imported in circumstances in which relief from customs duties, excise duty or excise taxes has been provided. In these circumstances, the value of the goods for GST or HST purposes is generally reduced to reflect the temporary nature of the use in Canada of the goods or the fact that a portion of the value of the goods has already been subject to tax. Where certain goods are imported on a temporary basis, the value of the goods for GST or HST purposes is determined under these Regulations based on the number of months in which the goods remain in Canada. The Regulations are being amended to clarify how

the number of months is to be determined in cases where the period during which the goods are in Canada does not begin or does not end on the first or last day respectively of a month as defined in subsection 123(1) of the *Excise Tax Act.*

For example, if goods are imported on June 15th and exported on July 20th of the same year, the definition "month" in subsection 123(1) of the Act and proposed new subsection 2(2) of the Regulations, read together, provide that the period from June 15th to July 14th is one month and the remaining days of the period, which are part of a month (i.e., July 15th to August 14th) that is not a complete month in the period, are deemed to constitute a month. Therefore, in this example, the goods would be considered to be in Canada for a period of two months. As this clarification is consistent with what has been the administrative practice, it is proposed to come into force on December 31, 1990.

Certain of the formulae for determining, for GST/HST purposes, the value of imported goods based on the number of months the goods remain in Canada apply only to goods described in various items of the *Temporary Importation Regulations* made under the *Customs Tariff.* A technical amendment is proposed, to apply immediately, which would clarify, for greater certainty only, where the cross-references to the items of the *Temporary Importation Regulations* are applicable. Specifically, they apply even where the importation in question is not subject to duty, and therefore not subject to those Regulations, as long as conditions provided for in those Regulations, such as those pertaining to the period of time the goods are in Canada, are met.

As announced in the Department of Finance Press Release dated March 27, 1991, amendments to the Regulations are also proposed to deal with goods that are exported for the purpose of being serviced or further processed outside Canada and are subsequently imported, or can be demonstrated to have been incorporated into other imported goods. In this case, the GST or HST would apply only to the value of the processing performed outside Canada (including the value of any goods that were added to produce the processed goods) and the remaining duties payable on the processed goods. This amendment would apply to goods released after March 1991.

As announced in the Department of Finance Press Release of November 5, 1991, the Regulations are proposed to be amended to ensure that tax does not apply to the full value of temporarily imported leased buses and aircraft. Instead, it is proposed that tax apply to 1/60th of the value of the bus or aircraft for each month it remains in Canada, provided certain conditions are met.

The bus or aircraft must be exported on or before the termination of the lease or the day that is 24 months after its importation, whichever comes first. The leased bus or aircraft may be exported and re-imported more than once. However, the total number of months that it is held in Canada under a lease with the lessor cannot exceed 24. Finally, the lessee must have obtained authorization from the Minister of National Revenue to determine the value of the imported bus or aircraft on the 1/60th basis. Consistent with the previous announcement of this measure, this provision would apply to importations in respect of which GST or HST becomes remittable after November 4, 1991.

Finally, the short title of the Regulations is being amended to reflect the implementation of the HST on April 1, 1997.

ANNEX

Table 1
Streamlined Accounting
Remittance Rates Adjusted Downward Retroactive to April 1, 1997

Place of Supplier and Place of Supply	Rate Set Out In March 21, 1997 Draft	Adjusted Rate
Non-Public Service Bodies:		
Non-HST Province (Principally Service Providers)		
Sales to HST Province	13	11.6
HST Province (Principally Service Providers)		
Sales to HST Province	10.7	10
Non-HST Province (Principally Goods Providers)		
Sales to HST Province	10.5	9.3
HST Province (Principally Goods Providers)		
Sales to HST Province	5.4	5
Non-Profit Organization-HST Province		
Sales to HST Province	10.7	10
Non-Profit Organization-Non-HST Province		
Sales to HST Province	13	11.6
Municipalities		
Newfoundland-Sales to HST Province	10.6	10.5
Nova Scotia-Sales to HST Province	12.4	11.6
New Brunswick-Sales to HST Province	12.4	11.6
Non-HST Province-Sales to HST Province	13.8	12.4
University\Colleges-Pre HST rate of 5.6%		
Nova Scotia-Sales to HST Province	12	11.2
Non-HST Province-Sales to HST Province	13.6	12.2
University\Colleges-Pre HST rate of 6%		
Nova Scotia-Sales to HST Province	12.9	12
Non-HST Province-Sales to HST Province	14	12.5
Schools		
Nova Scotia-Sales to HST Province	12.9	12
Non-HST Province-Sales to HST Province	14	12.5
Hospitals		
Nova Scotia-Sales to HST Province	13.3	12.4
Non-HST Province-Sales to HST Province	14.2	12.7

Table 2
Streamlined Accounting Remittance Rates Adjusted Upward
For Reporting Periods Beginning After Date of Announcement

Place of Supplier and Place-of-Supply	Pre-Announcement Date Rate	Post-Announcement Date Rate
Non-Public Service Bodies:		
HST Province (Principally Service Providers)		
Sales to Non-HST Province	2.7	3.2
Non-Profit Organization- HST Province		
Sales to Non-HST Province	2.7	3.2
Municipalities		
Newfoundland-Sales to Non-HST Province	2.6	3.8
Nova Scotia-Sales to Non-HST Province	4.4	5
New Brunswick-Sales to Non-HST Province	4.4	5
University\Colleges-Pre HST rate of 5.6%		
Newfoundland-Sales to Non-HST Province	0.8	2.3
Newfoundland-Sales to HST Province	8.8	9.1
Nova Scotia-Sales to Non-HST Province	4	4.5
New Brunswick-Sales to Non-HST Province	0.8	2.3
New Brunswick-Sales to HST Province	8.8	9.1
University\Colleges-Pre HST rate of 6%		
Newfoundland-Sales to Non-HST Province	2.5	4.1
Newfoundland-Sales to HST Province	10.5	10.8
Nova Scotia-Sales to Non-HST Province	4.9	5.4
New Brunswick-Sales to Non-HST Province	2.5	4.1
New Brunswick-Sales to HST Province	10.5	10.8
Schools		
Newfoundland-Sales to Non-HST Province	2.4	4.1
Newfoundland-Sales to HST Province	10.4	10.7
Nova Scotia-Sales to Non-HST Province	4.9	5.4
New Brunswick-Sales to Non-HST Province	2.4	4.1
New Brunswick-Sales to HST Province	10.4	10.7
Hospitals		
Newfoundland-Sales to Non-HST Province	0.8	3.9
Newfoundland-Sales to HST Province	8.8	10.6
Nova Scotia-Sales to Non-HST Province	5.3	5.8
New Brunswick-Sales to Non-HST Province	0.8	3.9
New Brunswick-Sales to HST Province	8.8	10.6